BRIEF FOR THE UNITED STATES.

SUPREME COURT OF THE UNITED STATES.

Nos. 187 AND 188.

THE UNITED STATES vs. JOHN E. REESIDE,

AND

JOHN E. REESIDE vs. THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

b

SUPREME COURT OF THE UNITED STATES.

DECEMBER TERM, 1868.

No. 187.—THE UNITED STATES vs. JOHN E. REESIDE.—APPEAL FROM THE COURT OF CLAIMS.

AND

No. 188.—JOHN E. REESIDE vs. THE UNITED STATES.—APPEAL FROM THE COURT OF CLAIMS.

These cases are appeals from the *same judgment*, and are really one case brought here in two modes.

THE FACTS.

General Frémont, in August, 1861, being in command of the Department of the West, with headquarters at St. Louis, by an order under his hand, appointed Reeside, (who was in fact an expert in buying horses and a responsible man,) "inspector of horses for that department," to be responsible that every horse bought should be worth the price paid, and adding, "You will be allowed two and a half per cent. commission;" and on the same day, by a special order, General Frémont directed Reeside to go to Cincinnati and purchase and inspect 2,000 horses for the service of the army in that department, at prices not over $130 per horse on an average.

Under this appointment Reeside purchased and inspected 5,027 horses; which horses, by the orders of General Frémont, were turned over to divers quartermasters in that department, and by them vouchers were given to the vendors of the horses, and the horses were put into the military service of the United States.

Reeside was employed in this business from the 11th day of August, until the 7th day of December, in the year 1861, and disbursed, as expenses incident to the business, of his own money, $585 50; and that the amount of said disbursements, added to a reasonable compensation for his personal services, amount to $4,000.

That commissions at 2½ per cent. on the aggregate amount of his purchases, added to the disbursements, (stated above for expenses,) amount to $20,376 62.

The court below held the appointment of Reeside and the agreement for commissions unauthorized by law and void; but that Reeside having rendered *valuable* services, the benefits of which were realized and

accepted by the United States, he is entitled to compensation for the services were reasonably worth, and gave judgment for claimant for $4,000, and from this judgment each party has appealed.

Among the "ultimate facts" returned in this case, is found the following statement, (page 5:) "So far as the President and Secretary of War could confer them, he, (General Frémont,) was invested with all their authority and power in raising, equipping, and supplying an army in the shortest possible time."

It is respectfully submitted that this is not a *mere* finding of *fact*, but is a conclusion of the court involving questions of both *law* and *fact*. It may be that there are powers which were *not conferred* on General Frémont, or *attempted to be conferred* either by the President or Secretary of War, which powers the Court of Claims may hold could not be in any manner conferred upon a commanding general, and yet which this court would hold *might in some manner* be *lawfully* conferred upon a commanding general. The Court of Claims having specified no special powers conferred on General Frémont, and having failed to state, as naked or ultimate facts, *any acts done* either by the President or by the Secretary of War in the way of conferring extra or special authority upon General Frémont, this general sweeping statement must be treated as a nullity. The statement on its face has *a boundary*, but it is a boundary *not known to this court*. It is limited to such *authority* and *power* of the President and of the Secretary of War as, *in the opinion of the Court of Claims*, could be conferred upon the general by the President and Secretary of War. No enumeration is given of the special powers, which (if any) the Court of Claims think might be so conferred. It cannot, therefore, be taken that any such powers were conferred, and this case must be treated upon the hypothesis that General Frémont was the commanding general of a military department in a state of war, and had the powers incident to that office, and had none others.

I.

General Frémont, as commandant of a military department, had no lawful authority to appoint a private citizen to an office not created by law, or to fix the compensation of such supposed officer; nor had he authority to employ a private agent to do the duties provided by law to be performed by officers created under the law.

The commanding general of an army, or of a department, is nowhere clothed with power to make contracts, or to appoint officers or agents to make contracts, in behalf of the United States for supplies for the army; but other officers are especially provided by law for that purpose.

By the act of March 28, 1812, (2d Statutes, page 696,) the Commissary General, aided by deputy commissaries, was charged with the duty of purchasing necessary supplies for the army; and it was made the duty of the deputy commissaries to make purchases, &c., when directed thereto by the Secretary of War by the Commissary General, or, *in cases of necessity*, by the commanding general.

By the act of April 24, 1816, (3d Statutes, page 297,) a complete corps of purchasing officers was organized and called the purchasing department.

The purchasing department was abolished August 23d, 1842, (5th Statutes, page 512,) and "the duties thereof" imposed upon the officers of the quartermaster's department.

II.

Reeside cannot recover on a *quantum meruit* for services rendered under the *void orders* of General Fremont.

The case must be treated as though General Frémont had never made any order on the subject.

The case then stands thus: Reeside, *on his own motion*, undertakes to contract with divers parties for horses, to be paid for by the United States, and spends four months in this way, and thus inducing divers parties to bring in horses and turn them over to the quartermasters, until the quartermasters have received and issued vouchers for over 5,000 horses, and put them into the service of the United States. Can he by this voluntary *ex-parte* action make the United States legally his debtor? He may deserve some compensation from his country in discharge of an obligation of gratitude, but for such compensation he must go to Congress and not to the Court of Claims.

Let it be observed that the court do not find that these *services* were accepted by the United States, but that the benefits arising therefrom were accepted.

Let us look at analagous cases. Suppose the government is in some great emergency recruiting an army, and has its recruiting officers out on duty, and some adventurous orator should go about the country, get up popular meetings, and make to them persuasive speeches, and thereby bring to the recruiting officers 5,000 good soldiers, who actually enlist and fight the battles of the country; would any lawyer say that the orator could recover in the Court of Claims such sums as that court might conceive to be a reasonable compensation for such oratorical services?

Suppose again a patriotic gentleman goes down to the front in the army, in the midst of war, and, with the consent of some brigade or division commander, puts on the uniform of a captain, and is appointed by the order of such commander an aid-de-camp on his staff, and for months performs faithfully and effectively the duties of such aid-de-camp; will any lawyer pretend that he could on such a case recover against the United States, in the Court of Claims, upon a *quantum meruit* for such services?

The true practice in all such cases is to send the claimant to Congress, who have the only general power under this government to pay mere debts of gratitude.

T. LYLE DICKEY,
Assistant Attorney General.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 8[illegible]/88

JOHN E. BEESIDE, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

FILED DECEMBER 7, 1887.

SUPREME COURT OF THE UNITED STATES.

No. 341.

JOHN E. REESIDE, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

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SUPREME COURT OF THE UNITED STATES.

No. 341.

JOHN E. REESIDE, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

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Petition.—No. 1,955.

To the honorable the Judges of the Court of Claims:

The petition of John E. Reeside, a resident of the city of Washington, and District of Columbia, a loyal citizen of the United State, respectfully showeth to your honors:

That your petitioner was appointed an inspector of horses at St. Louis, Missouri, on the 11th of August, 1861, deriving his appointment and authority from Major General John C. Fremont, then Commander-in-chief of the military department of the west, by virtue of his office of major general, and also by virtue of a special authority conferred upon him by the President of the United States, to employ civil agents for military purposes and duties, under the extraordinary condition of affairs at that time existing within said department, at an agreed compensation of a commission of two and one-half per cent. upon the cost and value of all horses purchased or inspected by him, and being held personally responsible, that each horse purchased or inspected should be of the value paid, and not exceeding the sum of one hundred and thirty dollars per horse. A true copy of the original written appointment and authority, with the terms of compensation, is hereunto annexed and marked "A," and made a part of this petition.

That your petitioner, on the same day, by General Fre-
2 mont, was ordered and directed to proceed forthwith to the city of Cincinnati, and to purchase and inspect, or cause to be purchased and inspected, two thousand horses for the use of the army of the Western Department, which he, the said Fremont, was then raising, organizing, and equipping, and limiting your petitioner in price, not to exceed one hundred and thirty dollars per horse on an average, at any of the appointed places of inspection; said horses to be suited to the most active field service, not too heavy for activity, nor too light for cavalry; to be of approved blood, so far as the limitation of price would command such stock. A true copy of the written instructions to your petitioner is hereunto annexed, marked "B," and made a part of this petition.

Your petitioner, accepting the appointment and trust confided in him as aforesaid, forthwith proceeded to the city of Cincinnati, and immediately entered upon the duties of his appointment and continued in the active performance of it under his instructions to the 7th day of December, 1861, when his appointment and authority was revoked by the order of Major General Halleck, then in command of said department.

A true copy of said Order, No. 19, or so much of it as relates to your petitioner, is hereunto annexed and marked "C," and made a part of this petition.

That between the 10th day of August and the 7th day of December following, your petitioner inspected, and purchased and inspected, under said order, and subsequent ones, from time to time received from said Fremont, acting under his authority aforesaid, and delivered to the proper persons, of the quality, kind, and description of

horses in his instructions mentioned, five thousand and twenty-seven horses, all of which were received by and came to the use and possession of the United States; costing in the aggregate, six hundred and forty-six thousand seven hundred and sixty dollars, ($646,760,) and his commissions amounting, at two and a half per cent. on the cost, to the sum of sixteen thousand one hundred and sixty-eight dollars and ninety-seven cents.

That your petitioner, during the aforesaid period, inspected other property, purchased for the use of the army of the United States, under the same authority, consisting of forage and military equipments, and which came to the actual use of the United States, to the value and cost, in the aggregate, of one hundred and forty-four thousand four hundred and eighty-eight dollars and ten cents, and his commissions, at two and a half per cent. on said sum,
3 amounting to the sum of three thousand six hundred and twenty-two dollars and fifteen cents.

That your petitioner made cash disbursements out of his own private funds, in and about the aforesaid business, under the same authority, which were necessary and proper, and without which he could not have accomplished his trust; in paying wages of men to accompany the delivery of the horses to St. Louis, to provide them with necessary food and drink for their subsistence on the cars, for extra-duty men in leading said horses to the places of delivery, and in branding them, and ropes, &c., amounting to the sum of five hundred and eighty-five dollars and fifty cents; a bill of particulars of which is hereunto annexed in a tabular statement, and marked "D," and is made a part of this petition.

The aggregate sum, claimed by your petitioner to be justly due and owing to him by the United States, is twenty thousand three hundred and seventy-six dollars, and sixty-two cents, under the aforesaid contract, in consideration of which indebtedness the United States became liable and promised to pay him that sum on demand.

Your petitioner further avers, that the United States are indebted to him in another like sum, for work and labor done and performed, goods sold and delivered, money had and received to his use, for money paid, laid out and expended, at the special request of the United States, and being so indebted in consideration thereof, promised to pay him said sum on demand.

Your petitioner, for the better understanding of his case, annexes hereunto a tabular statement of the names of the different persons from whom he purchased horses at Cincinnati, and the number of horses purchased from each person, where sent, and to whom delivered, being five thousand and twenty-seven in all, which statement is marked "E," and made a part of this petition.

Your petitioner further avers, that apart and distinct from the special contract made between General Fremont and himself, as before alleged, and upon which he relies, that by the custom of business, the usages of merchants and traders in the different commercial cities of the United States as long established and practised,

with the legal responsibilities assumed, and the extraordinary exertions he made, and the amount of business he transacted within so short a space of time, that a commission of two and a half per cent. on the aggregate amount of his inspections was no more than a fair and reasonable compensation for his services rendered. That
4 the United States government have, in times past, paid a greater compensation than your petitioner now claims, as the records of the Treasury Department will show. That many of the States, in raising and equipping troops for the present war, have paid commissions as high as five per cent. on the amount of purchases, and instances the States of Massachusetts and Indiana as prominent ones.

Your petitioner, for the purpose of informing this honorable court as to the manner of his executing the responsible duties of his trust, as well as to show the authority and instructions under which he acted, annexes to this petition, and makes a part of it, letters and telegrams directed to him at Cincinnati from General Fremont, Captain P. T. Turnley, A. Q. M. of the United States Army, on duty at St. Louis, under said General Fremont, Major J. C. Wood, the secretary of General Fremont, Major Robert Allen, Q. M. U. S. A., Hon. John A. Gurley, Brig. Gen'l S. R. Curtis, and Captain Charles Zagoni, of General Fremont's staff, in order of date as received, and acted upon by your petitioner as instructions to him.

Your petitioner avers, that he has at all times borne true allegiance to the Government of the United States, and has not in any way voluntarily aided, abetted, or given countenance to the rebellion against said government. That your petitioner made application to the Quartermaster General's office, where matters of this sort are properly cognizable, for the settlement and payment of his account; but his claim was rejected, and his authority to purchase and inspect horses and other property, and the power and authority of General Fremont to confer it upon him, was wholly denied and repudiated.

That your petitioner is the sole owner of said claim, no assignment or transfer of it, or any portion of it, ever having been made; that the United States has no offsets or counter claims against him; and that the amount he claims is justly and actually due him from the United States.

J. E. REESIDE,
Post-office address, Washington City.

T. J. D. FULLER, *Solicitor*,
Post-office address, Washington City.

5 DISTRICT OF COLUMBIA, *Washington County and City :*

On this day of October, A. D. 1863, personally came before me, John E. Reeside, of the city aforesaid, who signed the foregoing petition, and made solemn oath that the matters and things therein set forth, according to his best knowledge and belief, are true; that he himself, and those whose interest he, by assignment, holds, so far as he knows, or has reason so believe, have at all times borne

true allegiance to the Government of the United States, and has no in any way voluntarily aided, abetted, or given encouragment to the rebellion against the said government; that no assignment or transfer of said claim, or any part thereof, or any interest therein, has been made, except as in said petition stated, and that claimant is justly entitled to the amount therein claimed from the United States; that no credits or offsets exist in favor of the United States against him.

Subscribed and sworn to before me.

N. CALLAN, *J. P.*

6 In the Court of Claims, October term, 1864.

JOHN E. REESIDE
vs.
THE UNITED STATES. } No. 1,955.

And now comes the United States, by Charles Gibson, their Solicitor, and say that they are not indebted unto the said claimant in the said sum of $20,376 62, or any part thereof.

CHARLES GIBSON,
Solicitor for U. S.

January 6, 1864.

7 In the Court of Claims.

JOHN E. REESIDE
vs.
THE UNITED STATES. } No. 1,955.

And now, to wit, 18th of March, 1867, the court, upon due consideration of the premises, do find in favor of the claimant, and do order, adjudge, and decree, that the said John E. Reeside have and recover of and from the United States, the sum of four thousand one hundred and sixty-one dollars, ($4,161.)

BY THE COURT.

8 In the Court of Claims.

JOHN E. REESIDE
vs.
THE UNITED STATES. } No. 1,955.

And now, on this fifteenth day of June, and within ninety days from the day of the rendition of judgment by the court in the above-entitled cause, the petitioner, by his counsel, T. J. D. Fuller, comes into court and takes a cross appeal from the final judgment and order of the court in said cause, to the Supreme Court of the United States, and prays the court to grant said appeal, and to certify the facts and the conclusions of law arising thereon, in conformity with the rules in such case made and provided.

JOHN E. REESIDE,
By his attorney, T. J. D. FULLER.

Filed June 15th, 1867.

9 At a Court of Claims, held at the Capitol, in the city of Washington, on Tuesday, the 25th day of June, A. D. 1867.

JOHN E. REESIDE
vs.
THE UNITED STATES. } No. 1,955.

Mr. Norton, the Solicitor, presented to the court his application for an appeal, filed in the clerk's office on the 10th of instant June, and Mr. Fuller, counsel for the claimant, presented his application for an appeal, filed in the clerk's office on the 15th of instant June, and also filed his objections to the allowance of an appeal prayed for by the Solicitor of the United States.

10 At a Court of Claims held at the Capitol, in the city of Washington, on Wednesday, the 26th day of June, A. D. 1867.

JOHN E. REESIDE
vs.
THE UNITED STATES. } No. 1,955.

Ordered, that the petition for appeal filed in this case by the Solicitor of the United States, and the petition for appeal filed by the counsel for the claimant, be severally allowed.

11 In the Court of Claims.

Certificate of facts and conclusions of law.

JOHN E. REESIDE
vs.
THE UNITED STATES. } No. 1,955.

In this case, the court, upon due consideration of the premises, find the following facts in the nature of a special verdict:

In July, 1861, Major General John C. Fremont was appointed by the President to the command of the Department of the West, with headquarters at St. Louis, Missouri. So far as the President and Secretary of War could confer them, he was invested with all their authority and power in raising, equipping, and supplying an army in the shortest time possible. The public exigency in the department was immediate and pressing.

To obtain horses for the artillery, cavalry, and transportation in the department, Gen'l. Fremont appointed John E. Reeside purchaser and inspector of horses at Cincinnati, Ohio, by the following official documents and orders, and at the designated compensation.

12 "HEADQUARTERS WESTERN DEPARTMENT,
"ST. LOUIS, *August* 10, 1861.

"SIR: Having confidence in your knowledge and experience, I hereby authorize and command you as inspector of horses for this department, holding you responsible that every animal passed by

you shall be equal in value to the price paid. You will be allowed two and a half per cent. commission.

"J. C. FREMONT,
"*Major General Commanding.*

"JOHN E. REESIDE,
"*Inspector of horses.*"

"HEADQUARTERS WESTERN DEPARTMENT,
"St. LOUIS, *August* 10, 1861.

"SIR: You will proceed without delay to Cincinnati, and purchase, cause to be purchased, or inspect when purchased by other contractors, two thousand horses for the service of the army in this department. You will not pay, on an average, over one hundred and thirty dollars each, at such places as you may name, as places of inspection. The horses are required to be suited to the most active field service; and not too heavy for artillery, nor too light for cavalry; of approved blood, so far as the prices wil obtain such.

"J. C. FREMONT,
"*Major General Commanding.*

"JOHN E. REESIDE,
"*Inspector of horses.*"

Mr. Reeside was an expert in the purchase of horses, and a responsible man.

Under this appointment Reeside purchased, of various persons, five thousand and twenty-seven horses. These horses, under the orders of Gen'l Fremont, were turned over to the various Quartermasters of the Department of the West, and by them, vouchers were given to the persons from whom the horses had been bought by Reeside, and the horses were put into the service of the United States. Reeside was employed in this business from the 11th day of August, 1861, till the 7th day of December, in the same year. The commissions, at two and a half per centum upon the aggregate
13 of the purchases made by him, amounted to the sum of nineteen thousand seven hundred and ninety-one dollars and twelve cents, and for cash disbursements, out of his own funds, the sum of five hundred and eighty-five dollars & fifty cents; amounting in the whole to $20,376 62.

We further find, that the services and disbursements of Mr. Reeside, while so employed, were reasonably worth the sum of four thousand dollars, irrespective of any contract engagement.

Upon these facts, the court held—

1st. That the appointment of Reeside, by Major Gen'l J. C. Fremont, was unauthorized, and therefore void.

2d. That the appointment being void for want of power to make it, the agreement for compensation for the same reason, is a nullity.

3d. But, that having rendered valuable service to the United States, the benefits of which were realized and accepted by them, he is entitled to be paid such sum as his services were reasonably worth.

14 In the Court of Claims.

JOHN E. REESIDE
vs.
THE UNITED STATES, } No. 1,955.

I, Samuel H. Huntington, chief clerk of the Court of Claims, do hereby certify that the foregoing are true transcripts of the pleadings in the above entitled cause, and the final judgment of the court thereon; of the application of the counsel for claimant for the allowance of an appeal, as filed in the clerk's office on the 15th day of June, 1867, and of the order of the court allowing the same; of the special finding of the facts by a majority of the court, and the conclusions of law on said facts, on which the court founds its judgment.

In testimony whereof, I have hereunto set my hand, and affixed the seal of said court, at Washington, this 6th day of December, A. D. 1867.

[SEAL.]

SAM'L H. HUNTINGTON,
Chief Clerk Court of Claims.

O

Supreme Court of the United States.

DECEMBER TERM, 1868.—Nos. 187 and 188.

THE UNITED STATES, Appellant, vs. REESIDE,

AND

REESIDE, Appellant, vs. THE UNITED STATES.

T. J. D. FULLER.

M'GILL & WITHEROW, PRINTERS.

Supreme Court of the United States.

DECEMBER TERM, 1869.

No. 187—THE UNITED STATES, apt. *vs.* REESIDE; and

No. 188—REESIDE, apt. *vs.* THE UNITED STATES.

BRIEF FOR RESIDE.

The main question, if not the only one, arising upon this record, is the authority of Frémont to make the contract relied upon.

The contract is plain and explicit in its terms; it has been faithfully performed, and beneficially so to the United States; neither bad faith or fraud is alleged or suggested against Reeside.

1. The authority of PUBLIC AGENTS may be proved by precedent authority or subsequent notification, as the authority of PRIVATE AGENTS may be shown.

Buron *vs.* Denman, 2 Exchequer Rep., p. 267.
Hodgeson *vs.* Dexter, 1 Cranch, p. 345.
Macbeth *vs.* Haldimand, 1 Term, p. 172.

An agent, whether public or private, acting within the scope of his authority, binds his principal. (3 Wallace, p. 115.)

What were the agent's powers here, as found by the record? They were unlimited. They were all that was in the power of the President and Secretary of War to confer upon him, under the Constitution and laws of Congress, with ample appropriations of money in a time of war to cover the expenditure.

The SUBJECT-MATTER OF THE AGENCY is set out and found by the record.

It is to *raise*, *equip*, and *supply* an army in the shortest possible time, the public exigency being immediate and pressing.

3. This, then, is the *predicate* of the authority of General

Frémont. But it is not all. He was as unrestricted in the means to be used as he was in the end to be attained. He was many miles from the centre of Government. Every thing was confided to his discretion, purposely, that he might not be trammeled or embarrassed in his action.

4. In the early part of the war, the President of the United States (Mr. Lincoln) found it necessary to do many things of questionable authority, certainly, without precedent in the history of the Government. I allude more particularly to his placing a large amount of public money in the hands of a committee in the city of New York, for the purchase of vessels and the material of war, who were neither *quartermasters* or *commissaries*, and his defence of his action, by a special message to Congress, of May 25, 1862. (See Cong. Globe, vol. 3, p. 2383, of that session.) It will be borne in mind, that while he was doing these things, which Congress heartily approved, General Frémont was exercising like power in the grand drama at the West. Frémont's instructions were given him in June, 1861. This contract was made in August, 1861. And Congress, by an act, approved August 6, 1861, enacted that all *orders*, *acts*, and *proclamations*, of the President, respecting the *army* or *navy*, made after the 4th of March, 1861, and prior to the date of said act, were legalized and made valid, as much so as if they had been issued and performed by the express authority of Congress. (See vol. 12 Stats. at Large, p. 326, sec. 3.)

The third section is: "That all the *acts*, *proclamations*, *and* ORDERS of the President of the United States, after the 4th March, 1861, respecting the army and navy of the United States, and calling out, or relating to, the militia or volunteers from the States, are hereby approved, and in all respects legalized and made valid, to the same extent, and with the same effect, as if they had been issued and done under the previous express authority and direction of the Congress of the United States."

Can any question arise that this act does not cover the previous authority given to General Frémont to proceed to St. Louis, and there to *raise*, *organize*, *arm*, *and equip* an army of thirty thousand men, for the purpose of descending the Mississippi?

The court, in their special finding of the facts, say: "*So far as the President and Secretary of War could confer them, he (General Frémont) was invested with all their authority and power in raising, equipping, and supplying an army in the*

shortest possible time. The public exigency was immediate and pressing."

Upon the question of the power and authority of the President and Secretary of War to confer upon General Frémont the authority to employ such agencies as in his or their discretion might be considered best adapted to produce the desired and authorized end, I cite—

Gratiot *vs.* United States, 15 Peters, 336.
United States *vs.* Jones, 18 Howard, p. 92.

The court can judicially take notice of a state of war; an existing rebellion; its magnitude and extent; and consult history and public documents for a knowledge of facts.

Greenleaf Evi., vol. 1, secs. 480, 481, 482.
Radcliff *vs.* Insurance Co., 7 John, p. 50.
Keny *vs.* Holt, 5 Term, p. 436.

5. Who can say that the means to an end used by General Frémont, in the particular instance before the court, were not wise and judicious, and well adapted to the end in view?

6. But whether wise or unwise, he was made the sole judge, and by his decision his principal is bound.

The United States received and used the property purchased through the instrumentality of Reeside, and have made compensation for it. The United States is estopped *in pais* from repudiating a part of the acts of a general agent, without restrictions, after it has acknowledged the agency, by confirming a portion of the agent's acts.

Eldred *vs.* Chamberlain, 31 N. Y., p. 619.
Law *vs.* Cross, 1 Black, N. S., 233.

The distinction known to the law between a general and special agent applies to public as well as to private agents.

If the law of agency is applicable to the case at bar, the Government must stand or fall by it in its length and breadth.

The agency of General Frémont was as broad and as comprehensive, indeed more so, than that of General Scott or General Taylor, in the Mexican war; and for the purpose of showing the extent of their authority, as claimed for them by the Government, acquiesced in and approved by the people, I respectfully beg leave to refer the court to the message of President Polk to Congress, in response to a call of the House of Representatives. (See House Journal of 1848, page 114 and

page 183, and the annual message of the President of the United States to Congress, December, 1847,) and I cite—

Gratiot *vs.* United States, 15 Peters, 336.

United States *vs.* Jones, 18 Howard, p. 92.

The court say:

"There are many authorities conferred on the different departments of the Government, which, for their due execution, require services and duties which are not strictly appertaining to, ordevolved upon, any particular officer, and which require agencies of a discretionary character."

"In such cases, the department charged with the execution of the particular authority, business, or duty, has always been deemed incidentally to possess the power to employ the proper persons to perform the same, as the appropriate means to carry into effect the required end; and also the right, where the order or duty is of an extra service or duty, to allow the person so employed a suitable compensation."

See United States *vs.* Jones, 16 Howard, p. 189-90.

Reeside was not an officer of the Government; but, in the exercise of executive discrétion, it became necessary to employ outside or auxiliary aid, for the purpose of collecting the material of war, organizing and equipping an army, in a great public emergency, in the shortest possible time.

15 Peters, p. 397.

7 Peters, Pt. I, pp. 18, 28.

Cases United States *vs.* McDaniels, Ripley, and Fillebrown.

In time of war, the President and his Secretary of War, in raising, organizing, equipping, and supplying an army, are the Government—the highest ultimate agents known to the law. The President, by virtue of his office, and the previous acts of Congress, had authority to confer the power upon General Frêmont to do what he did in this instance, independent of the act of August 6, 1861.

The act of July 13, 1861, authorizes the President to declare non-intercourse between loyal and rebellious States.

ACT OF JULY 17, 1861, authorizes the Secretary of the Treasury to borrow $250,000,000.

ACT OF JULY 17, 1861, appropriates $200,000,000 for war purposes, specifying $10,000,000 *for cavalry horses, dragoon and artillery horses.*

ACT OF JULY 22, 1861, calls out 500,000 men.

Act of July 25, 1861, authorizes the President to accept the services of volunteers, not exceeding 500,000 men.

Act of July 29, 1861, provides how the President shall organize them.

Act of July 10, 1861, appropriates $10,000,000 for the President to purchase arms. Here are ample appropriations of money, adequate to the expenditures made, and indicated the legislative will.

For what the President did do, and his reasons for it, the powers he assumed and exercised, see his special message to Congress, May 26, 1862, (Cong. Globe, vol. 3, p. 2383.)

Also, upon the war powers of the President of the United States, see House Journal, 1848, (p. 114 and p. 183,) special message of President Polk to Congress, in reply to House resolution introduced by the Hon. John Minor Botts, and the annual message of the President of the United States, December, 1847, in relation to levying and collecting duties, in Mexico, from citizens of the United States, otherwise known as the Mexican contribution fund.

Also, Ex. Doc., 2d Sess. 37th Congress, No. 125, vol. 10; letter of Secretary of War, June 10, 1862, in answer to resolution Ho. Reps.

Also, the case of the "Hiawatha," in this court, (2 Black, p. 637,) settles the law, that the United States had the same belligerent rights in the war of the rebellion as in a foreign war.

Howard's Reports, vol. 16, pp. 189, 190.

The case of the *Venice*, (2 Wallace, p. 259,) as to the authority of a departmental commander to bind his Government, and, *a fortiori*, where his Government subsequently ratifies and adopts his acts.

See, also, Buron *vs.* Denman, (2 Exchequer Reports, p. 268,) upon the effect of subsequent recognition, or antecedent authority, as to the liability of public agents.

Hodgeson *vs.* Dexter, 1 Cranch, 245.

Macbeth *vs.* Haldimand, 1 Term. R., p. 172.

Suppose, upon the state of facts appearing to the court here, an action were pending against Frémont and in favor of Reeside, to recover the price agreed upon for his personal services and liability. If Frémont had the permission of the President and Secretary of War to make the contract, would it not exonerate him from liability, and remit Reeside to seek the very remedy, he is now pursuing against the Government?

As the contract was a lawful one, not *mala prohibita* or *malum in se*, Reeside should have his remedy, either against the principal or the agent.

1. General Frémont, in the exercise of that *vast* discretion conferred upon him, to accomplish the great work he had in hand, deemed it wise to employ, under a special contract, a *civil agent*, to gather up at remote points the materials of war for the use of the army he was to organize and equip. He might not have had the necessary number of quartermasters, or those of the effective and energetic character desirable. He was at liberty, in good faith, in the absence of fraud, in fact, to select such means, employ such agencies, as he deemed most desirable: to exercise his own judgment in the premises.

Whether he judged right or wrong, wisely or unwisely, or as the court would, is not the question; but had he the right to judge? That is the question.

Reeside, like the farmer, who, perchance, may have a horse suitable for the cavalry service, that he wishes to sell, could not review the judgment of the commander of a department.

The court find that "THE PUBLIC EXIGENCY IN THE DEPARTMENT WAS IMMEDIATE AND PRESSING."

Under such circumstances, General Frémont appoints an agent, a civilian, as auxiliary to the quartermasters; directs him to proceed to the best locality to purchase, or to inspect and purchase horses; at rates, for his personal services, ordinarily paid any commission or purchasing agent in any commercial centre.

6. There was no law which forbade the act, or which invalidated the contract.

The several laws and army regulations defining the duties of quartermasters do not prohibit the employment of civil agents to gather up or procure horses as auxiliary to or to facilitate their purchases.

The law in force at this time, bearing upon the question of the manner of contracting for public supplies, was section 10 of chap. 184, approved March 2, 1861, (vol. 10, p. 220.) All previous laws are repealed. This section is, all contracts, &c., &c., "*except for personal services*," shall be made, &c., &c.

Now, this contract was one for the *personal services* of *Reeside himself*. The subject of materials does not enter into it.

There was no law regulating the price to be paid for such services. The price must, therefore, necessarily be regulated by the terms of the contract. It is like the case of "*McCall's*

Agency," (in the 2d vol. Opinions of Attorneys General, p. 321,) where Mr. Berrien, in his letter to the Secretary of the Navy about purchasing supplies, says: "Where there is no permanent agent, the Secretary must of necessity have the power to appoint a special agent to perform the duty, and the measure of compensation to be allowed him must be regulated by contract."

United States *vs.* Armstrong, Gilpin's Rep., p. 399.
United States *vs.* McCall, Gilpin's Rep., p. 564.

It cannot be said, there were no "*adequate appropriations of money*" for making the purchases to which Reeside's agency related. The various acts of Congress cited show that ample appropriations of money had been made. If the personal services of an "*expert*" (as the case finds Reeside to be in this business) were calculated, in the judgment of General Frémont, to facilitate the raising and equipping an army, he might employ one in the great public emergency then existing. Time was a great element of success in his undertaking.

Again, the long-continued practice of the heads of departments to employ special counsel in important cases, where the public interest is deeply involved, is of too common occurrence to be mooted, even where the regular United States attorneys are present and participate in the transactions.

See the opinions of Att'y Gen. Cushing on this subject, vol. 7, pp. 141 and 686; Claims of Beal and Ratcliff, for services, also vol. 7, p. 96; "Contracts by Governments," and authorities cited therein.

I may refer to instances like the one of the late Secretary of War being employed as special counsel to go to California to attend the trials of important land cases, where there were proper Government officers present, for which he was paid a compensation commensurate with the value of his services.

7. Frémont's contract with Reeside was an act within the limits of the power delegated to him.

It is very difficult to fix limits to the powers a general commanding a military department in time of war may exercise, and more especially where his authority extends not to directing the movements of an army, but to the creating of one.

A person who can proclaim martial law—in other words, abrogate all law, and render the public obedient to his will; who will attempt to define limits to the exercise of such a power in making contracts? He commands life. He may take any one's property. No obstacle can stand in his way.

In his department, his power is as unlimited as the war power of the President over the whole United States.

The history of the late war abounds in precedents of the exercise of unlimited powers by departmental commanders in purchasing and collecting materials of war, and raising, organizing, and arming of men. The Burnside expedition, the Butler expedition, and McClellan expeditions are instances of the exercise of the power claimed for departmental commanders. The vast transportation and the material required, and the secresy of the ultimate destination of the several expeditions, are instances of the exercise of vast and undefinable war powers, which commanders have and do exercise, and upon which their ultimate success may depend.

10. But if the court shall determine the law applicable to the case to be, that Frémont had no authority to make the contract, and the agreement therefore not binding on the Government, then comes the question, is he entitled to any compensation for the money paid to the use and benefit of the United States, and pay for the services he performed?

The court below have found what they were worth in their judgment. The petition presents the necessary averments to cover any form of recovery that claimant may be entitled to.

There arises on this record another question, which it may not be amiss to notice.

That is, an estoppel *in pais!!*

The Government of to-day seeks to deny the authority of the Government of yesterday to do what it did; which presents a question of good faith, rather than one of authority, for the court to consider. It is not denied, indeed it is expressly found by the court, as one of the facts, in the nature of a special verdict, that the President of the United States and the Secretary of War did authorize, ratify, and confirm the contract between Frémont and Reside. In other words, the Government conferred on General Frémont, for this purpose, all the power it could confer.

This finding authorizes the assumption of the utmost stretch of power the Government under any conceivable circumstances can exercise.

It is not, therefore, a question of power, in a subordinate agent of the Government, whether he exceeded his power and instructions; but it is the authority and power of the Government itself, which is sought by the defence to be brought in question.

And the question *I raise* is, can this be permitted? Why does it not raise the precise question of a party to a private

suit in court saying, I admit doing what is alleged, but I deny my own authority to do for myself what I have done, and therefore claim to be exonerated from the consequences of my own acts. No fraud or duress is alleged; neither *infancy* or *coverture* is pleaded, or any other disability whatever.

A cabinet officer of the Government to-day is here in court, denying the authority of a cabinet officer of a former day to do what he admits he did do.

Yea, more: what the President authorized him to do; what the Government has done. It is common parlance; it has judicial authority and sanction, to speak of the President and his Secretaries "as the Government." When a high military or naval officer takes action, the question often arises, what will his Government do? Will it approve or disapprove of the act? I speak of the executive action of the Government, in contradistinction to its legislative or judicial action. If the Chief Executive of the nation does transcend his authority in making a contract in the purchase of property for the nation, is that a sufficient reason why the nation should not pay for it? In the instances of subordinate officers, whose acts and doings are dependent upon the *approval* of a higher grade of officers for their binding effect, the question of authority often arises. But when the ultimate and *highest* officers known to the law act, it is not a question of agency, of authority; it is a question of faith, of repudiation!

Hence, I aver against this defence an estoppel *in pais*. The Government should not be permitted to aver or prove any thing in contradistinction to what it has once solemnly avowed or done, any more than a private person. It would afford a good illustration of the point I make, if the next Attorney General, after the 4th of March, (if there should be a new one,) should appear in court and deny the authority or validity of the acts of the present distinguished and worthy officer in matters pertaining to the interests and welfare of the United States in court.

T. J. D. FULLER,
Attorney.

SUPREME COURT OF THE UNITED STATES.

No. 340.

THE UNITED STATES, APPELLANTS,

vs.

JOHN E. REESIDE.

APPEAL FROM THE COURT OF CLAIMS.

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1 *Petition.*

To the honorable the Judges of the Court of Claims:

The petition of John E. Reeside, a resident of the City of Washington, and District of Columbia, a loyal citizen of the United States, respectfully showeth to your honors, that your petitioner was appointed an inspector of horses at St. Louis, Missouri, on the 11th of August, 1861, deriving his appointment and authority from Major General John C. Fremont, then Commander-in-Chief of the Military Department of the West, by virtue of his office of major general, and also by virtue of a special authority conferred upon him by the President of the United States, to employ civil agents for military purposes and duties, under the extraordinary condition of affairs at that time existing within said department, at an agreed compensation of a commission of two and one-half per cent. upon the cost and value of all horses purchased or inspected by him, and being held personally responsible that each horse purchased or inspected should be of the value paid, and not exceeding the sum of one hundred and thirty dollars per horse. A true copy of the original written appointment and authority, with the terms of compensation, is hereunto annexed, and marked "A," and made a part of this petition.

2 That your petitioner, on the same day, by General Fremont, was ordered and directed to proceed forthwith to the city of Cincinnati, and to purchase and inspect, or cause to be purchased and inspected, two thousand horses for the use of the army of the Western Department, which he, the said Fremont, was then raising, organizing, and equipping, and limiting your petitioner in price not to exceed one hundred and thirty dollars per horse, on an average, at any of the appointed places of inspection; said horses to be suited to the most active field service—not too heavy for activity, nor too light for cavalry; to be of approved blood, so far as the limitation of price would command such stock. A true copy of the written instructions to your petitioner is hereunto annexed, marked "B," and made a part of this petition.

Your petitioner, accepting the appointment and trust confided in him as aforesaid, forthwith proceeded to the city of Cincinnati, and immediately entered upon the duties of his appointment, and continued in the active performance of it under his instructions to the 7th day of December, 1861, when his appointment and authority was revoked by the order of Major General Halleck, then in command of said department.

A true copy of said Order, No. 19, or so much of it as relates to your petitioner, is hereunto annexed and marked "C," and made a part of this petition.

That between the 10th day of August and the 7th day of December following, your petitioner inspected, and purchased and inspected under said order, and subsequent ones, from time to time received from said Fremont, acting under his authority aforesaid, and delivered to the proper persons, of the quality, kind, and description of

horses in his instructions mentioned, five thousand and twenty-seven horses, all of which were received by, and came to the use and possession of the United States; costing in the aggregate, six hundred and forty-six thousand seven hundred and sixty dollars, ($646,760,) and his commissions amounting, at two and a half per cent. on the cost, to the sum of sixteen thousand one hundred and sixty-eight dollars and ninety cents.

That your petitioner, during the aforesaid period, inspected other property purchased for the use of the army of the United States, under the same authority, consisting of forage and military equipments, and which came to the actual use of the United States, to the value and cost, in the aggregate, of one hundred and forty-four thousand four hundred and eighty-eight dollars and ten cents, and his commissions, at two and a half per cent. on said sum, amounting to the sum of three thousand six hundred and twenty-two dollars and fifteen cents.

That your petitioner made cash disbursements out of his own private funds, in and about the aforesaid business, under the same authority, which were necessary and proper, and without which he could not have accomplished his trust, in paying wages of men to accompany the delivery of the horses to St. Louis, to provide them the necessary food and drink for their subsistence on the cars, for extra duty men in leading said horses to the places of delivery, and in branding them, and ropes, &c., amounting to the sum of five hundred and eighty-five dollars and fifty cents; a bill of particulars of which is hereunto annexed in a tabular statement, and marked "D," and is made part of this petition.

The aggregate sum, claimed by your petitioner to be justly due and owing to him by the United States, is twenty thousand three hundred and seventy-six dollars and sixty-two cents, under the aforesaid contract, in consideration of which indebtedness the United States became liable, and promised to pay him that sum on demand.

Your petitioner further avers that the United States are indebted to him in another like sum, for work and labor done and performed, goods sold and delivered, money had and received to his use, for money paid, laid out and expended, at the special request of the United States, and being so indebted in consideration thereof, promised to pay him said sum on demand.

Your petitioner, for the better understanding of his case, annexes hereunto a tabular statement of the names of the different persons from whom he purchased horses at Cincinnati, and the number of horses purchased from each person, where sent, and to whom delivered, being five thousand and twenty-seven in all, which statement is marked "E," and makes a part of this petition.

Your petitioner further avers, that apart and distinct from the special contract made between General Fremont and himself, as before alleged, and upon which he relies, that by the custom of business, the usages of merchants and traders in the different commercial cities of the United States as long established and practiced, with the legal

responsibilities assumed, and the extraordinary exertions he made, and the amount of business he transacted within so short a space of time, that a commission of two and one-half per cent. on the aggregate amount of his inspections was no more than a fair and reasonable compensation for his services rendered. That the United
4 States government have, in times past, paid a greater compensation than your petitioner now claims, as the records of the Treasury Department will show. That many of the States, in raising and equipping troops for the present war, have paid commissions as high as five per cent. on the amount of purchases, and instances the States of Massachusetts and Indiana as prominent ones.

Your petitioner, for the purpose of informing this honorable court as to the manner of his executing the responsible duties of his trust, as well as to show the authority and instructions under which he acted, annexes to this petition, and makes a part of it, letters and telegrams directed to him at Cincinnati, from General Fremont, Captain P. T. Turnley, A. Q. M. of the United States Army, on duty at St. Louis, under said General Fremont, Major J. C. Wood, the secretary of General Fremont, Major Robert Allen, Q. M. U. S. A., Hon. John A. Gurley, Brig. Gen'l S. R. Curtis, and Captain Charles Zagoni, of General Fremont's staff, in the order of date as received and acted upon by your petitioner as instructions to him.

Your petitioner avers, that he has at all times borne true allegiance to the government of the United States, and has not in any way voluntarily aided, abetted, or given countenance to the rebellion against said government. That your petitioner made application to the Quartermaster General's office, where matters of this sort are properly cognizable, for the settlement and payment of his account; but his claim was rejected, and his authority to purchase and inspect horses and other property, and the power and authority of General Fremont to confer it upon him, was wholly denied and repudiated.

That your petitioner is the sole owner of said claim, no assignment or transfer of it, or any portion of it, ever having been made; that the United States has no offsets or counter claims against him; and that the amount he claims is justly and actually due him from the United States.

J. E. REESIDE,
Post-office address, Washington City.

T. J. D. FULLER, *Solicitor*,
Post-office address, Washington City.

5 DISTRICT OF COLUMBIA,
Washington County and City:

On this day of October, A. D. 1863, personally came before me, John E. Reeside, of the city aforesaid, who signed the foregoing petition, and made solemn oath that the matters and things therein set forth, according to his best knowledge and belief, are true; that he himself, and those whose interests he, by assign-

ment, holds, so far as he knows or has reason to believe, have at all times borne true allegiance to the government of the United States, and has not in any way voluntarily aided, abetted, or given encouragement to the rebellion against the said government; that no assignment or transfer of said claim, or any part thereof, or any interest therein has been made except as in said petition stated, and that claimant is justly entitled to the amount therein claimed from the United States; that no credits or offsets exist in favor of the United States against him.

Subscribed and sworn to before me.

N. CALLAN, *J. P.*

6 In the Court of Claims, October term, 1864.

JOHN E. REESIDE
vs.
THE UNITED STATES. } No. 1,955.

And now come the United States, by Charles Gibson, their Solicitor, and say that they are not indebted unto the said claimant in the said sum of $20,376 62, or any part thereof.

CHARLES GIBSON,
Solicitor for U. S.

January 6, 1864.

7 In the Court of Claims.

JOHN E. REESIDE
vs.
THE UNITED STATES. } No. 1,955.

And now, to wit, 18th of March, 1867, the court, upon due consideration of the premises, do find in favor of the claimant, and do order, adjudge, and decree, that the said John E. Reeside have and recover of and from the United States, the sum of four thousand one hundred and sixty-one dollars, ($4,161 00.)

BY THE COURT.

8 Court of Claims.

JOHN E. REESIDE
vs.
THE UNITED STATES. } No. 1,955.

The United States, by E. P. Norton, its Solicitor, makes application to the honorable Court of Claims for an appeal of the case of John E. Reeside *vs.* The United States, to the Supreme Court of the United States.

E. P. NORTON,
Solicitor of the United States.

Filed June 10th, 1867, in the clerk's office.

9 At a Court of Claims, held at the Capitol, in the city of Washington, on Wednesday, the 26th day of June, A. D. 1867.

JOHN E. REESIDE
vs.
THE UNITED STATES. } No. 1,955.

Ordered, that the petition for appeal, filed in this case by the Solicitor for the United States, and the petition for appeal filed by the counsel for the claimant, be severally allowed.

In the Court of Claims.

10 *Certificate of facts and conclusions of law.*

JOHN E. REESIDE
vs.
THE UNITED STATES. } 1,955.

In this case, the court, upon due consideration of the premises, find the following facts in the nature of a special verdict.

In July, 1861, Major General John C. Fremont was appointed by the President to the command of the Department of the West, with headquarters at St. Louis, Missouri. So far as the President and Secretary of War could confer them, he was invested with all their authority and powers in raising, equipping, and supplying an army in the shortest time possible. The public exigency in the department was immediate and pressing. To obtain horses for the artillery, cavalry, and transportation in the department, Gen'l Fremont appointed John E. Reeside purchaser and inspector of horses at Cincinnati, Ohio, by the following official documents and orders, and at the designated compensation.

HEADQUARTERS WESTERN DEPARTMENT.
ST. LOUIS, *August* 10, 1861.

SIR: Having confidence in your knowledge and experience, I hereby authorize and command you as inspector of horses for this department, holding you responsible, that every animal passed by you shall be equal in value to the price paid.

11 You will be allowed two and a half per cent. commission.

J. C. FREMONT,
Major General Commanding.

JOHN E. REESIDE, *Inspector of horses.*

HEADQUARTERS WESTERN DEPARTMENT,
ST. LOUIS, *August* 10, 1861.

SIR: You will proceed without delay to Cincinnati, and purchase, cause to be purchased, or inspect when purchased by other contractors, two thousand horses for the service of the army in this department. You will not pay on an average over one hundred and thirty

dollars each, at such places as you may name as places of inspection. The horses are required to be suited to the most active field service, and not too heavy for artillery, nor too light for cavalry, of approved blood, so far as the prices will obtain such.

J. C. FREMONT,
Major Gen. Commanding.

JOHN E. REESIDE, *Inspector of horses.*

Mr. Reeside was an expert in the purchase of horses, and a responsible man.

Under this appointment Reeside purchased, of various persons, five thousand and twenty-seven horses. These horses, under the order of Gen. Fremont, were turned over to the various quartermasters of the Department of the West, and by them vouchers were given
12 to the persons from whom the horses had been bought by Reeside, and the horses were put into the service of the United States. Reeside was employed in this business from the 11th day of August, 1861, till the 7th day of December, in the same year. The commissions at two and a half per centum upon the aggregate of the purchases made by him, amounted to the sum of nineteen thousand seven hundred and ninety-one dollars and twelve cents, and for cash disbursements out of his own funds, the sum of five hundred and eighty-five dollars and fifty cents, amounting in the whole to $20,376 62.

The further find that the services and disbursements of Mr. Reeside, while so employed, were reasonably worth the sum of four thousand dollars, irrespective of any contract engagement.

Upon these facts the court held—

1st. That the appointment of Reeside by Major Gen. J. C. Fremont, was unauthorized, and therefore void.

2d. That the appointment being void for the want of power to make it, the agreement for compensation for the same reason is a nullity.

3d. But that having rendered valuable service to the United States, the benefits of which were realized and accepted by them, he is entitled to be paid such sum as his services were reasonably worth.

13 In the Court of Claims.

JOHN E. REESIDE
vs.
THE UNITED STATES. } No. 1,955.

I, Samuel H. Huntington, chief clerk of the Court of Claims, do hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled cause, and the final judgment of the court thereon; of the application of the solicitor of the United States for the allowance of an appeal, as filed in the clerk's office on the 10th day of June, 1867, and of the order of the court allowing the same;

of the special finding of the facts by the majority of the court, and the conclusions of law on said facts on which the court finds its judgment.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at Washington, this 6th day of December, A. D. 1867.

[SEAL.] SAM'L H. HUNTINGTON.
Chief Clerk Court of Claims.